

AMENDMENTS

Claims 1-17 and 20-22 are pending.

Claims 1, 3, and 9 have been amended.

Claims 21-22 have been added.

Claims 11 and 18-19 have been cancelled.

Support for the amendments is found in the claims and specification (e.g., paragraphs [0011] and [0023]), as originally filed. The specification describes that the claimed drink contains solids passing through a 20-mesh Tyler standard sieve (opening of the mesh is 833  $\mu\text{m}$ ) (page 13, paragraph [0023]). Thus, the claimed size describes a particle size because the insoluble solids have passed a size separating sieve. In *Ex parter Parks*, the Board stated that “a lack of literal support does not, in and of itself, establish a prima facie case of lack of adequate description support, 30 USPQ2d 1234, 1236 (Bd. Pat App. & Int. 1993). Also, a disclosure need not recite the claimed invention *in haec verba*. *Univ. of Rochester v. G.D. Searle & Co.*, 358 F.3d 916, 923 (Fed. Cir. 2004).

In addition, paragraph [0011] describes a broad range of the content as a dry weight of the insoluble substance in the drink of 0.1-1.2 wt.% and a number of points within this range (e.g., 0.2-0.9 wt.%, 0.21-0.85 wt.%, 0.25-0.8 wt.% and 0.3-0.6 wt.%). Further, Tables 1-6 describe the following content of the insoluble substance in the drink: 1.3; 1.1; 0.9; 0.5; 0.4; and 0.2. Thus, the ranges 0.1-0.6 wt.% and 0.3-0.6 wt.% are supported by the original specification.

The purpose of the written description requirement is to ensure that a patent application conveys to a person of skill in the art that the applicants had possession of the claimed invention. See, e.g., *LizardTech, Inc. v. Earth Resource Mapping, Inc.*, 424 F3d 1336, 1345, 76 USPQ2d 1724, 1731 (Fed. Cir. 2005). See also *In re Wertheim*, 541 F.2d 257 (CCPA 1976) (the parent claimed recited 25-60% and had examples at 35% and 50%, and the

application at issue claimed 35-50% which was found by the Court to be supported in the parent application).

Thus, it is believed that the amended claims are adequately supported.

No new matter is believed to have been added.

#### REMARKS/ARGUMENTS

The claimed vegetable drink comprises solids derived from vegetables, an acidic polysaccharide water-soluble dietary fiber, and water (claim 1). The claimed drink also can comprise a neutral polysaccharide water-soluble dietary fiber (claim 2). "A solid" means an isolated substance having a particle size of 833  $\mu\text{m}$  or less (page 6 of the present specification). A content of the solid is from 0.1 to 0.6 (or 0.3-0.6) wt. %. When the content of the solid is higher, a viscosity and unpleasant odor caused by heat sterilization is increased (page 7).

Claims 1, 4, 7-12, and 17 are rejected under 35 U.S.C. 103(a) over Hoersten et al., US 4,988,530 and Romeo et al., WO 2004/017759.

Claims 2-3, 5-6, 13-14, and 18-20 are rejected under 35 U.S.C. 103(a) over Hoersten et al., Romeo et al., and Wang et al., US 6,004,610.

Claims 15-16 are rejected under 35 U.S.C. 103(a) over Hoersten et al., Romeo et al., and Iwata et al., US 5,324,526.

The rejections are traversed because:

(1) the combination of the references does not describe or suggest a vegetable drink comprising 0.1-0.6 (or 0.3-0.6) wt.% of an insoluble substance;

(2) one would not have been motivated to use the insoluble solids of Romeo et al. in juice of Hoersten et al. because (a) Hoersten et al. and Romeo et al. achieve a different goal (liquid juice devoid of any dispersion or a sediment at the bottom of Hoersten et al. verses a paste-like sauce of Romeo et al.) and (b) Hoersten et al. explicitly discuss that a suspension or

dispersion of insoluble solids does not satisfy a demand of consumers and that a gritty texture and an unpleasant taste caused by insoluble solids is avoided in a liquid juice composition of Hoersten et al.; and

(3) one would not have been motivated to combine the disclosures of Romeo et al. and Hoersten et al. for the purpose of obtaining a drink that has a less grassy odor, a less heated odor caused by heat sterilization, a savory taste and improved ease of drinking.

Hoersten et al. describe a fruit and vegetable liquid product comprising juice as a liquid carrier and a soluble dietary fiber such as gum arabic and pectin (col. 2, lines 33-41). Hoersten et al. describe that when the insoluble fibers are incorporated in the juice product, it is difficult to maintain proper suspension and dispersion and the insoluble fiber tends to settle to the bottom of the drink (col. 1, lines 43-61). In addition, the insoluble fiber can provide the liquid food with a gritty texture and an unpleasant taste (col. 1, lines 43-61).

Hoersten et al. do not describe that the drink comprises 0.1-0.6 (or 0.3-0.6) wt.% of an insoluble substance and a particle size of the insoluble substance of 833  $\mu\text{m}$  or less.

The Examiner has relied on the disclosure of Romeo et al. for the missing limitation. Romeo et al. describe a tomato product obtained from tomato juice comprising 5.5-20 wt.% of a dry residue and 94.5-80 wt.% of water, wherein the dry residue comprises 18-70 wt.% of insoluble solids and 82-30 wt.% of soluble solids (abstract).

The Examiner has alleged that combining the solids of Romeo et al. with the Hoersten et al. tomato juice is obvious and would have produced an expected result. Applicants respectfully disagree.

First, Romeo et al. describe a tomato product obtained from tomato juice. A goal of Romeo et al. is to produce a tomato product that does not need to be diluted or concentrated before use on foods and has an improved saucing power and devoid of any caramel taste and bitter taste and is better for cooking, (page 3, second full paragraph). Thus, Romeo et al.'s

tomato products are prepared from juice and are sauces or pastes that do not need to be diluted.

One would not have been motivated to use the insoluble solids of Romeo et al. that are specifically adjusted for sauces and pastes for foods and cooking in a liquid product such as juice of Hoersten et al. because (a) Hoersten et al. and Romeo et al. achieve a different goal (liquid juice devoid of any dispersion or a sediment at the bottom of Hoersten et al. *verses* a paste-like foods and cooking sauce of Romeo et al.) and (b) Hoersten et al. explicitly discuss that a suspension or dispersion of insoluble solids does not satisfy a demand of consumers and that a gritty texture and an unpleasant taste caused by insoluble solids is avoided in a liquid juice composition of Hoersten et al.

Thus, adding insoluble solids to the Hoersten et al. juice does not necessarily preserve/improve properties of the Hoersten et al. juice and, in fact, will probably deteriorate test and the liquid appearance based on the explicit warning of Hoersten et al. regarding insoluble solids in juice.

Moreover, the claimed vegetable drink advantageously has a less grassy odor, a less heated odor caused by heat sterilization, a savory taste and improved ease of drinking. See ¶ [0008] and the Examples of the specification. Neither Hoersten et al. nor Romeo et al. disclose or suggest a drink having these properties. A skilled artisan would not have been motivated to combine the disclosures of Romeo et al. and Hoersten et al. for the purpose of obtaining a drink that has a less grassy odor, a less heated odor caused by heat sterilization, a savory taste and improved ease of drinking.

Wang et al. and Iwata et al. do not cure the deficiency of Romeo et al. and Hoersten et al. because Wang et al. and Iwata et al. do not describe a vegetable drink comprising 0.1-0.6 (or 0.3-0.6) wt.% of an insoluble substance.

Thus, the combinations of Romeo et al., Hoersten et al., Wang et al., and/or Iwata et al. do not make the claimed drink obvious.

Applicants request that the rejection be withdrawn.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph. Claims 1 and 3 have been amended to clarify that the claimed content of an insoluble substance is the content of the substance in the drink and also that "833  $\mu$ m or less" describes a size of particles because claimed drink contains solids that pass through a 20-mesh Tyler standard sieve (opening of the mesh is 833  $\mu$ m) (page 13, paragraph [0023]). Thus, the claimed size describes a particle size because the insoluble solids have passed a size separating sieve.

Claims 18-19 have been canceled.

Applicants request that the rejection be withdrawn.

A Notice of Allowance for all pending claims is requested.

Respectfully submitted,

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